

STATE OF SOUTH CAROLINA

(Caption of Case)

Example: Application for a Class C Charter Certificate from
John Doe dba Doe's Limo

Application for Class C Charter Bus Certificate From Diamond
Transportation SC LLC

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

TRANSPORTATION COVER SHEET

DOCKET

NUMBER:

2014 - 67 - T

If this is your first time filing an application with the PSC, you will not have a Docket Number. The Commission will assign one to you. If you have filed with the Commission before, a Docket Number was assigned and should be entered above.

(Please type or print) David M. Boucher, Managing Member
Submitted by:

Telephone: 610-715-9578

Address: 137 Jaffrey Road

Fax: 610-200-5083

Malven, PA 19355

Other:

Email: dboucher@comcast.net

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

NATURE OF ACTION (Check all that apply)

- | | |
|---|--|
| <input type="checkbox"/> Application - Class A/A Restricted | <input type="checkbox"/> Request for Name Change on Certificate |
| <input type="checkbox"/> Application - Class C Taxi | <input type="checkbox"/> Request to Amend Scope of Authority |
| <input type="checkbox"/> Application - Class C Charter | <input type="checkbox"/> Request to Amend Tariff (rate increase, etc.) |
| <input checked="" type="checkbox"/> Application - Class C Charter Bus | <input type="checkbox"/> Request to Amend Passenger Limit |
| <input type="checkbox"/> Application - Class C Non-Emergency | <input type="checkbox"/> Request |
| <input type="checkbox"/> Application - Class C Stretcher Van | <input type="checkbox"/> Exhibit |
| <input type="checkbox"/> Application - Class E Household Goods | <input type="checkbox"/> Late-Filed Exhibit |
| <input type="checkbox"/> Application - Class E Hazardous Waste | <input type="checkbox"/> Letter |
| <input type="checkbox"/> Application | <input type="checkbox"/> Proposed Order |
| <input type="checkbox"/> Request for Extension to Comply with Order | <input type="checkbox"/> Publisher's Affidavit |
| <input type="checkbox"/> Request for Order Granting Authority to Obtain a Certificate of Public Convenience and Necessity to be Rescinded | <input type="checkbox"/> Reservation Letter |
| <input type="checkbox"/> Request for Cancellation of Certificate | <input type="checkbox"/> Response |
| <input type="checkbox"/> Request for Suspension | <input type="checkbox"/> Return to Petition |
| <input type="checkbox"/> Request for Reinstatement | <input type="checkbox"/> Other: _____ |

RECEIVED
FEB 18 2014
PSC
CLERK'S OFFICE

If you have any questions about this form, please contact the PUBLIC SERVICE COMMISSION at 803-896-5100.

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
101 Executive Center Drive, Suite 100
Columbia, South Carolina 29210
(Mailing address: Post Office Drawer 11649, Columbia, SC 29211)

Phone: (803) 896-5100 Fax: (803) 896-5199

APPLICATION FOR CLASS C CHARTER BUS CERTIFICATE

Date: February 17, 2014

CLASS C - CHARTER BUS

Application is hereby made for a Certificate of Public Convenience and Necessity, in accordance with the provision of S.C. Code Ann., § 58-23-10, et seq. (1976), and amendments thereto.

1. Name under which business is to be conducted (corporation, partnership, or sole proprietorship, with or without trade name.)

Diamond Transportation SC, LLC

18 Hunter Road, Suite 3 Hilton Head Island, SC 29926

Street Address of Applicant

David M. Boucher, Managing Member 137 Jaffrey Road Malvern PA 19355

Mailing Address of Applicant (If different from street address)

610-715-9578

610-200-5083

Phone

Fax

dboucher@comcast.net

Email Address

2. If the Applicant is an LLC or a corporation, a copy of the Certificate of Existence from the South Carolina Secretary of State and the Articles of Incorporation must be attached. (If incorporated outside of SC, attach South Carolina Secretary of State "Foreign Corporation" Certificate.)

3. Select Entity Type: (Check one)

☐ Individual Owner/Sole Proprietorship

☐ Partnership - List names and addresses of all person having an interest in the business.

☒ Corporation - List names and addresses of two principal officers.

David M. Boucher, Managing Member 137 Jaffrey Road Malvern PA 19355

P. Joseph Scott, General Manager 1200 Conroy Place Easton PA 18040

INSURANCE QUOTE

This form **MUST BE COMPLETED AND SIGNED** by an **AUTHORIZED INSURANCE COMPANY REPRESENTATIVE**. The insurance quote must be complete, listing current insurance premiums. At the discretion of the Commission, a copy of current insurance policies may be required. Do not provide a copy of insurance policies unless requested. You will not be required to purchase insurance until your application has been approved and an order has been issued by the PSC. **THIS IS ONLY A QUOTE**

The following insurance quote is for:

DIAMOND TRANSPORTATION SC LLC

Name of Applicant

18 HUNTER ROAD SUITE 3 HILTON HEAD ISLAND SC 29926

Address of Applicant

Amount of Premium:

Limits Quoted: (See Below)

Liability Insurance \$ **47,565**

Limits **\$1,500,000 CSL**

The above quoted premium is for a term of **12** months.

Minimum Limits - Intrastate Only:

1-7 Passengers* \$ 25,000/50,000/25,000

8-15 Passengers* \$ 25,000/100,000/25,000

* Passengers = Number of seatbelts in the vehicle, including the driver's seatbelt

ZURICH AMERICAN INS. CO.

Name of Insurance Company

1400 American Ln. Schaumburg, IL 60196

Home Office Address of Company

I am familiar with the Commission's Rules and Regulations relating to insurance requirements and the above quote meets the minimum insurance limits prescribed. The insurance company making this quote is authorized by the South Carolina Department of Insurance to do business in South Carolina.

2/12/2014

Date

Alex Spachman

Authorized Insurance Company Representative's Signature

Belmont Insurance Services, LLC
1 Westbury Park Way, #301
Bluffton, SC 29910

NOTICE:

If you wish to self-insure your motor vehicles for liability and property damage, you must comply with S.C. Code Ann. Sections 56-9-60 and 58-23-910. For more information, contact Vickie Coker with the Department of Motor Vehicles at (803) 896-8457.

If you wish to apply as a self-insured for worker's compensation coverage in South Carolina you may do so with the South Carolina Worker's Compensation Commission (WCC) provided that you will be able to: 1) post a surety bond or letter-of-credit with the WCC for a minimum of \$500,000, 2) agree to pay a yearly self-insurance tax, and 3) agree to pay an annual assessment to the South Carolina Second Injury Fund. For more information, contact the WCC Self-Insurance Division at (803) 737-5712 or on the web at www.wcc.state.sc.us/self-insurance.

Exhibit Fit, Willing, and Able (FWA)

Diamond Transportation SC LLC

Name of Applicant

2471317

U.S.D.O.T No.

Applied For
ICC No.

1. Does Applicant have a Safety Rating from the U.S.D.O.T.?

☐ Yes ☒ No ☒ Pending (Submit when received.)

If Yes, indicate rating below and provide copy.

☐ Satisfactory ☐ Conditional ☐ Unsatisfactory

2. Have any of Applicant's drivers or vehicles been places "out of service" by Transport Police safety officers in the past twelve (12) months?

☐ Yes ☒ No

3. Are there currently any outstanding judgments against the Applicant?

☐ Yes ☒ No

If Yes, indicate nature of judgement(s) against applicant.

4. Is Applicant familiar with all insurance regulations and safety regulations governing charter bus carrier operations in South South Carolina, and does Applicant agree to operate in compliance with these regulations?

☒ Yes ☐ No

5. Is Applicant aware of the Commission's insurance requirements and the insurance premium costs associated therewith?

☒ Yes ☐ No

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
POST OFFICE DRAWER 11649
COLUMBIA, SOUTH CAROLINA 29211

Applicant is familiar with the provision of S.C. Code Ann. §58-23-10, et seq.(1976), and amendments thereto, and R.103-100 through R.103-241 of the Commission's Rules and Regulations for Motor Carriers (Volume 26, S.C. Code Ann. Regs., 1976), and R.38-400 through R.38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers (Volume 23A, S.C. Code Ann., 1976) and amendments thereto, and hereby promises compliance therewith.

S.C. Code Ann. Section 58-3-250 states, in part, that every final order of the Commission must be served by electronic service, registered or certified mail, upon the parties to the proceeding or their attorneys.

Please check the applicable box:

- ☒ The Applicant AGREES to receive future Commission orders related to the Applicant's authority in South Carolina through the Commission's eService System. The Applicant authorizes the Commission to serve its orders by using the e-mail address as it appears on page one of this Application. To sign up for eService notifications, please visit www.psc.sc.gov to create a My DMS account.
- ☐ The Applicant DOES NOT AGREE to receive future Commission orders related to the Applicant's authority in South Carolina through the Commission's eService System.

The Applicant for the Certificate as set forth in the foregoing, swear or affirm that all statements contained in the above application are true and correct.

Daniam Boucher

Applicant's Signature

David M. Boucher, Managing Member

Title of Applicant (e.g. President, Owner, etc.)

STATE OF SOUTH CAROLINA)

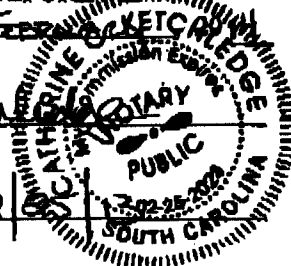
COUNTY OF Beaufort)

SWORN TO BEFORE ME

This 17th day of February

Caroline C. Ketchum
Notary Public

Commission Expires 2/25/2015



The State of South Carolina



Office of Secretary of State Mark Hammond

Certificate of Existence

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that;

DIAMOND TRANSPORTATION SC, LLC, A Limited Liability Company duly organized under the laws of the State of South Carolina on January 14th, 2014, with a duration that is at will, has as of this date filed all reports due this office, paid all fees, taxes and penalties owed to the Secretary of State, that the Secretary of State has not mailed notice to the company that it is subject to being dissolved by administrative action pursuant to section 33-44-809 of the South Carolina Code, and that the company has not filed articles of termination as of the date hereof.

Given under my Hand and the Great
Seal of the State of South Carolina this
16th day of January, 2014.

Mark Hammond
Mark Hammond, Secretary of State

Print Form

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

STATE OF SOUTH CAROLINA
SECRETARY OF STATE
ARTICLES OF ORGANIZATION
Limited Liability Company - Domestic
Filing Fee - \$110.00

JAN 14 2014

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

TYPE OR PRINT CLEARLY IN BLACK INK

The undersigned delivers the following articles of organization to form a South Carolina limited liability company pursuant to S.C. Code of Laws §33-44-202 and §33-44-203.

1. The name of the limited liability company (Company ending must be included in name*)

Diamond Transportation SC, LLC

*NOTE: The name of the limited liability company must contain one of the following endings: "limited liability company" or "limited company" or the abbreviation "L.L.C.", "LLC", "L.C.", "LC", or "Ltd. Co."

2. The address of the initial designated office of the limited liability company in South Carolina is

5 Gumtree Road, Unit C-3

Street Address

Hilton Head, SC

29926

City

Zip Code

3. The initial agent for service of process is

Thomas J. Enright

Name

Signature of Agent

and the street address in South Carolina for this initial agent for service of process is

5 Gumtree Road, Unit C-3

Street Address

Hilton Head, SC

29926

City

Zip Code

4. List the name and address of each organizer. Only one organizer is required, but you may have more than one.

- (a) Robert Worthington, Jr.

Name

2021 Arch Street

Street Address

Philadelphia

PA

19103

City

State

Zip Code

- (b)

Name

Street Address

City

140115-0030

DIAMOND TRANSPORTATION SC, LLC

FILED: 01/14/2014
Filing Fee: \$110.00 ORIG

Mark Hammond

South Carolina Secretary of State

Name of Limited Liability Company Diamond Transportation SC, LLC

5. ☐ Check this box only if the company is to be a term company. If the company is a term company, provide the term specified, _____
6. ☐ Check this box only if management of the limited liability company is vested in a manager or managers. If this company is to be managed by managers, include the name and address of each initial manager.
- (a) _____
Name

Street Address

City State Zip Code
- (b) _____
Name

Street Address

City State Zip Code
7. ☐ Check this box only if one or more of the members of the company are to be liable for its debts and obligations under §33-44-303(c). If one or more members are so liable, specify which members, and for which debts, obligations or liabilities such members are liable in their capacity as members. This provision is optional and does not have to be completed.
8. Unless a delayed effective date is specified, these articles will be effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time.

9. Any other provisions not inconsistent with law which the organizers determine to include, including any provisions that are required or are permitted to be set forth in the limited liability company operating agreement may be included on a separate attachment. Please make reference to this section if you include a separate attachment.
10. Each organizer listed under number 4 must sign.

[Signature]
Signature of Organizer

January 13, 2014

Date

Signature of Organizer

Date

DIAMOND TRANSPORTATION SC LLC

Operating Agreement

This Operating Agreement is entered into by the parties listed on the signature page hereof as of January 14, 2014. The parties are entering into this Operating Agreement for the purpose of forming a limited liability company pursuant to the provisions of the South Carolina LLC Act.

ACCORDINGLY, in consideration of the mutual covenants and agreements contained in this Agreement, the sufficiency of which is hereby acknowledged, the parties agree as follows:

Section I Formation.

1.1 **Name.** The name of the Company shall be "Diamond Transportation SC LLC," or such other name as the Members may from time to time hereafter designate.

1.2 **Formation.** The Company was formed upon the execution and filing with the Secretary of State of the State of South Carolina of a certificate of formation (the "Certificate") of the Company in the form filed on January 14, 2014. The parties hereto ratify and confirm the filing of the Certificate.

1.3 **Issuance of Units.** The Company shall be authorized to issue from time to time up to 1,000 Units, which Units may be issued pursuant to such agreements as the Members may approve. Ownership of Units shall be evidenced by this Agreement and amendments hereto; there shall be no certificates evidencing ownership of Units. Each of the Members owns the number of Units set forth on Schedule I hereto. The Members shall not authorize any increase in the number of Units above the number authorized as of the date hereof without the consent of the Members.

1.4 **Operating Agreement.** This Agreement is intended to serve as an "operating

Diamond Transportation SC LLC Operating Agreement

agreement," as such term is defined in §33-44-101 South Carolina LLC Act.

1.5 Purpose. The purpose of the Company shall be to own and manage a livery and transportation business and such other activities lawful under South Carolina law.

1.6 Offices. The principal office of the Company and such additional offices as the Members may determine to establish, shall be located at such place or places inside or outside the State of South Carolina as the Members may designate from time to time. The registered office of the Company shall be located at 18 Hunter Road, Suite 3, Hilton Head, SC 29926.

Section 2 Voting Rights/Meeting of Members.

2.1 Votes. Except as otherwise provided herein, each Member shall have the number of votes equal to the number of Units owned by such Member.

2.2 Meetings of Members. Meetings of Members shall be held at any place designated by the Members. In the absence of any such designation, meetings of Members shall be held at the principal place of business of the Company. Any meeting of the Members may be held by conference telephone or similar communication equipment so long as all Members participating in the meeting can hear and speak to one another, and all Members participating by telephone or similar communication equipment shall be deemed to be present in person at the meeting.

2.3 Call of Meetings. Meetings of the Members may be called at any time by any Member for the purpose of taking action upon any matter requiring the vote or authority of the Members or for any other matter as to which such vote or authority is deemed by any Member to be necessary or desirable.

2.4 Notice of Meetings of Members. All notices of meetings of Members shall be sent or otherwise given not less than three or more than 60 days before the date of the meeting.

Diamond Transportation SC LLC Operating Agreement

The notice shall specify the place, date and hour of the meeting and the general nature of the business to be transacted.

2.5 Adjourned Meeting: Notice. Any meeting of Members may be adjourned from time to time by the vote of a Majority in Interest Members represented at that meeting, either in person or by proxy. When any meeting of Members is adjourned to another time or place, notice need not be given of the adjourned meeting unless a new record date of the adjourned meeting is fixed or unless the adjournment is for more than 30 days from the date set for the original meeting, in which case the Members shall set a new record date and shall give notice in accordance herewith. At any adjourned meeting, the Company may transact any business that might have been transacted at the original meeting.

2.6 Quorum: Voting. At any meeting of the Members, a Majority in Interest of Members present, in person or by proxy, shall constitute a quorum for all purposes, unless a higher aggregate percentage Interest is required by applicable law. Except as otherwise required by applicable law or herein, all matters upon which the Members are entitled to vote or which require determination by the Members shall be determined by a Majority in Interest of Members.

2.7 Waiver of Notice by Consent of Absent Members. In the event that a meeting of Members occurs in violation of the notice requirements in this Section 2, the transactions at such meeting shall be valid nonetheless as long as each person entitled to vote who was not present in person or by proxy signs a written waiver of notice or a consent to a holding of the meeting or an approval of the minutes. The waiver of notice or consent need not specify either the business to be transacted or the purpose of any meeting of Members. Attendance by a person at a meeting shall also constitute a waiver of notice of that meeting, except when the person objects at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened and except that attendance at a meeting is not a waiver of any right to object

Diamond Transportation SC LLC Operating Agreement

to the consideration of matters not included in the notice of the meeting if that objection is expressly made at the time of consideration of such matters not included in the notice of such meeting.

2.8 Member Action by Written Consent Without a Meeting. Any action that may be taken at any meeting of Members may be taken without a meeting and without prior notice if a consent in writing setting forth the action so taken is signed by a Majority in Interest of Members (or Members holding such higher aggregate percentage Interest as is required to authorize or take such action under the terms hereof or of applicable law). Any such written consent may be executed and given by telecopy or similar electronic means.

2.9 Proxies. Every Member entitled to vote or act on any matter at a meeting of Members shall have the right to do so either in person or by proxy, provided that an instrument authorizing such a proxy to act is executed by the Member or such Member's attorney-in-fact in writing and dated not more than 11 months before the meeting, unless the instrument specifically provides for a longer period. A valid proxy that does not state that it is irrevocable shall continue in full force and effect unless (i) revoked by the person executing it before the vote pursuant to that proxy in writing and delivered to the Company stating that the proxy is revoked or (ii) written notice of the death or incapacity of the maker of that proxy is received by the Company before the vote pursuant to that proxy is counted. A proxy purporting to be executed by or on behalf of a Member shall be deemed valid unless challenged at or prior to its exercise and the burden of proving invalidity shall rest on the challenger. Except to the extent inconsistent with the provisions hereof, the South Carolina LLC Act, and judicial construction thereof by the courts of the State of South Carolina, shall be applicable to proxies granted by any Member. No Member, by reason of such Member's status as such, shall have any authority to

Diamond Transportation SC LLC Operating Agreement

act for or bind the Company but shall have only the right to vote on or approve the actions herein specified to be voted on or approved by such Member.

Section 3 Management of the Company.

3.1 **Managing Member.** Subject to the delegation of rights and powers to officers as provided for herein, the Managing Member shall have the sole right to manage the business and affairs of the Company and shall have all powers and rights necessary, appropriate or advisable to effectuate and carry out the purposes and business of the Company. The Managing Member shall be elected by the Members, who hereby agree that David M. Boucher shall serve as the Managing Member.

3.2. **Officers.** The Company may elect officers, including, without limitation, a President, Vice President, a Secretary, a Treasurer and any other officers which the Members may elect. Any number of offices may be held by the same person.

3.3 **Election of Officers.** The officers of the Company shall be chosen by vote of the Members, and each shall serve at the pleasure of the Members, subject to the rights, if any, of an officer under any contract of employment approved by the Members.

3.4 **Removal and Resignation of Officers.** Subject to the rights, if any, of an officer under any contract of employment approved by the Members, any officer may be removed, with or without cause, by the Members at any regular or special meeting of the Members or by such officer, if any, upon whom such power of removal may be conferred by the Members. Any officer may resign at any time by giving written notice to the Company. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice, and unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary

Diamond Transportation SC LLC Operating Agreement

to make it effective. Any resignation is without prejudice to the rights, if any, of the Company under any contract approved by the Members to which the officer is a party.

3.5 Vacancies in Offices. A vacancy in any office because of death, resignation, removal, disqualification or other cause shall be filled by the Members. The President may make temporary appointments to a vacant office reporting to the President pending action by the Members.

3.6 Indemnification.

(a) Each Person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter, a "Proceeding") (excluding, however, any Proceeding in which the Company or any other Member is an opposing party) by reason of the fact that he or she is or was a Member or an officer of the Company, or is or was serving at the request of the Company as a manager, officer, employee or agent of another limited liability company or of a corporation, partnership, joint venture, trust or other enterprise, shall be indemnified and held harmless by the Company to the fullest extent authorized by the South Carolina LLC Act (including indemnification for negligence or gross negligence but excluding indemnification (i) for acts or omissions involving actual fraud or willful misconduct or (ii) with respect to any transaction from which the indemnitee derived an improper personal benefit), against all expense, liability and loss (including attorneys' fees, judgments, fines, excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith.

(b) The right to indemnification conferred in paragraph (a) shall include the right to be paid by the Company the expenses (including attorneys' fees) incurred in defending

Diamond Transportation SC LLC Operating Agreement

any proceeding in advance of its final disposition (hereinafter an "advancement of expenses"). The rights to indemnification and to the advancement of expenses conferred in paragraph (a) and this paragraph (b) shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a Member, officer, employee or agent and shall inure to the benefit of the indemnitee's heirs, executors, trustees and administrators.

(c) The rights to indemnification and to the advancement of expenses conferred shall not be exclusive of any other right that any Person may have or hereafter acquire under any statute, agreement, vote of the Members or otherwise.

(d) The Company may maintain insurance, at its expense, to protect itself and any Member, officer, employee or agent of the Company or another limited liability company, consultant, corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Company would have the power to indemnify such Person against such expense, liability or loss under the South Carolina LLC Act.

(e) The Company may, to the extent authorized from time to time by the Members, grant rights to indemnification and to advancement of expenses to any employee or agent of the Company to the fullest extent of the provisions of this Section 3.6 with respect to the indemnification and advancement of expenses of Members and officers of the Company.

Section 4 Capital Contributions; Issuance of Units.

4.1 **Contributions.** Each of the Members has contributed to the Company, or will contribute to the Company within 30 days of the date hereof, the consideration reflected on Schedule I hereto. No Member shall have any further obligation to contribute additional capital.

4.2 **Capital Accounts.** A separate capital account shall be maintained on the books of the Company for each Member, which shall be adjusted in accordance with Treasury Regulation

Diamond Transportation SC LLC Operating Agreement

Section 1.704-1(b)(2)(iv): (1) as of December 31 of each year; (2) immediately prior to the acquisition of any Unit by any Person; (3) effective as of the date of a sale of substantially all of the assets of the Company; and, (4) upon the date of a Liquidation of the Company, as follows:

(a) the amount of money and the fair market value of property (net of any liabilities secured by such property that the Company assumes or takes subject to) contributed by such Member to the Company, and the Net Profits allocated to such Member shall be credited to such Member's capital account; and

(b) the amount of the Net Losses allocated to such Member under Section 5 and any Distributions (including the fair market value (as determined by the Members in good faith) of property other than cash (net of any liabilities that such Member assumes or takes subject to)) distributed to such Member shall be debited from such Member's capital account.

Section 5 Allocations.

5.1 **Net Profits and Net Losses.** Net Profits earned by the Company and Net Losses incurred by the Company since the last date on which Net Profits or Net Losses shall have been allocated to the Members shall be allocated ratably to the Members based on the number of Units held by each Member at such time; provided, that at such time as a Member's capital account shall be reduced to zero, such Member shall be excluded from the allocations of Net Losses pursuant to this Section 5.1 until such time as such Member's capital account has a positive balance (except to the extent provided in Section 5.3); provided, further, that at such time as the capital account of all Members shall be reduced to zero as a result of the allocation of Net Losses to the Members, Net Losses shall be allocated to the Members ratably based on the number of Units held by each Member at such time.

5.2 **Section 704(c) Allocation.** Any gain or loss and any depreciation or other cost

Diamond Transportation SC LLC Operating Agreement

recovery deductions recognized by the Company for income tax purposes in any Fiscal Year with respect to all or any part of the Company's property that is required or permitted to be allocated among the Members in accordance with Section 704(c) of the Code and the Treasury Regulations promulgated thereunder so as to take into account the variation, if any, between the adjusted tax basis of such property at the time of its contribution and the fair market value of such property at the time of its contribution shall be allocated to the Members for income tax purposes in the manner so required or permitted.

5.3 Special Allocations. Notwithstanding anything to the contrary in this Section 5:

(a) In the event any Member unexpectedly receives any adjustments, allocations or Distributions described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the capital account deficit of such Member as quickly as possible, provided that an allocation pursuant to this Section 5.3(a) shall be made only if and only to the extent that such Member would have a capital account deficit after all other allocations provided for in this Section 5 have been tentatively made as if this Section 5.3(a) were not in this Agreement.

(b) In the event any Member has a deficit capital account balance at the end of any Fiscal Year that is in excess of the sum of (i) the amount such Member is obligated to restore and (ii) the amount such Member is deemed to be obligated to restore pursuant to Regulations Sections 1.704-2(g)(1)(ii) and 1.702-2(i)(5), each such Member shall be specially allocated items of Company income and gain in the amount of such excess, provided that an allocation pursuant to this Section 5.3(b) shall be made if and only to the extent that such Member would have a deficit capital account balance in excess of such sum after all other allocations provided for in this Section 5 have been tentatively made as if Section 5.3(a) and this Section 5.3(b) were not in

Diamond Transportation SC LLC Operating Agreement

this Agreement.

(c) The allocations set forth in this Section 5.3 (the "Regulatory Allocations") are intended to comply with certain requirements of Regulations Sections 1.704-1(b) and 1.704-2 and shall be interpreted consistently therewith.

5.4 Allocations upon a Liquidation. Notwithstanding any other provision of this Section 5 to the contrary, in the taxable year in which there is a Liquidation, after the allocations in Section 5.3, the capital accounts of the Members will, to the extent possible, be brought to the amount of the liquidating Distributions to be made to them from the proceeds of such Liquidation by allocations of items of income, gain (including any gain realized from the sale of assets from such Liquidation), deduction, or loss credited to the capital account of a Member whose capital account is less than the amount to be distributed to it, and debited from the capital account of the Member whose capital account is greater than the amount to be distributed to it, as the case may be. For purposes of this Section 5.4, the capital account balance of each Member shall be increased by the amount that such Member is deemed obligated to restore to the Company upon Liquidation of the Company (or upon Liquidation of the Member's Interest) pursuant to Treasury Regulations Sections 1.704-2(g)(1)(ii) and 1.704-2(i)(5). Upon any Distribution in kind (including Distributions of marketable securities), the Distribution shall be treated as if the property was sold for its fair market value and the proceeds therefrom distributed to the Members. The deemed gain or loss on such disposition shall be included in the calculation of Net Profit and Net Loss for the period in which the Distribution occurred.

6. Distributions.

6.1 Distributions. All Distributions of assets of the Company, whether in cash or in kind, shall be made at such times and in such amounts as the Members may determine, and shall

Diamond Transportation SC LLC Operating Agreement

be distributed among and made to the Members ratably based upon the aggregate number of Units held by each Member at such time.

6.2 Liability for Return of Capital. No Member shall have any liability for the return of any Member's Capital Contribution, which Capital Contribution shall be payable solely from the assets of the Company at the absolute discretion of the Members, subject to the requirements of the South Carolina LLC Act. No Member, nor any successor-in-interest to any Member, shall have the right, while this Agreement remains in effect, to have the property of the Company partitioned, or to file a complaint or institute any proceeding at law or in equity to have the property of the Company partitioned, and each of the Members, on behalf of itself and its successors, representatives and assigns, hereby irrevocably waives any such right.

7. Transfer

7.1 Restrictions on Transfer. Each Member shall Transfer Units as follows:

(a) Each Member may Transfer such Member's Units to an Affiliate of such Member so long as the entity or person receiving such Units shall agree in writing to be bound by and comply with the provisions of this Agreement as if the recipient were a Member and with any other agreement executed in connection with the issuance of Units to such Member.

(b) Other than in connection with a Transfer to an Affiliate, any Transfer by any Member shall require the written consent of the Members.

Section 8 Administrative Matters.

8.1 Tax Matters Partner. The Company hereby designates David M. Boucher as the initial "Tax Matters Partner" for purposes of Code Section 6231 and the regulations promulgated thereunder. The Tax Matters Partner shall promptly advise each Member of any audit proceedings proposed to be conducted with respect to the Company. In addition, the Tax

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Matters Partner shall provide the Members with copies of all documents prepared and delivered in connection with any such audit proceedings.

8.2 Partnership Status. It is the intention of the Members that the Company shall be taxed as a "partnership" for federal, state, local and foreign income tax purposes. The Members shall take all reasonable actions, including the amendment of this Agreement and the execution of other documents, as may reasonably be required in order for the Company to qualify for and receive "partnership" treatment for federal, state, local and foreign income tax purposes.

8.3 Fiscal Year/Internal Record Keeping. The Fiscal Year of the Company shall be the calendar year. The books and records of the Company shall be maintained in accordance with generally accepted accounting principles and Section 704(b) of the Code and the Treasury Regulations promulgated thereunder.

8.4 Notices.

All notices, requests, consents and other communications hereunder to any party shall be deemed to be sufficient if contained in a written instrument delivered in person, by telecopy, by nationally-recognized overnight courier or first class registered or certified mail, return receipt requested, postage prepaid, addressed to such party at the address set forth below:

If to the Company:

David M. Boucher, Managing Member
1200 Conroy Place
Easton, PA 18040

with a copy to:

Vincent T. Donohue, Esquire
Lamb McErlane, P.C.
24 East Market Street
West Chester, PA 19381-0565

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If to the Members, to the address recorded in the Company's books for such person or at such other address as may hereafter be designated in writing by such party to the other parties. All such notices, requests, consents and other communications shall be deemed to have been delivered and received (i) in the case of personal delivery or delivery by telecopy, on the date of such delivery, (ii) in the case of dispatch by nationally recognized overnight courier, on the next business day following such dispatch and (iii) in the case of mailing, on the third business day after the posting thereof.

8.5 Withdrawal. No Member shall have the right to withdraw from the Company except with the consent of the non-withdrawing Members and upon such terms and conditions as may be specifically agreed upon between the Company and the withdrawing Member. The provisions hereof with respect to Distributions upon withdrawal are exclusive, and no Member shall be entitled to claim any further or different distribution upon withdrawal under the South Carolina LLC Act or otherwise.

8.6 Additional Members. Pursuant to the consent of the Members, the Company shall issue additional Units and shall admit additional Members upon the acquisition of such Units upon such terms and conditions, at such time or times, and for such Capital Contributions as shall be determined by the Members. In connection with the admission of an additional Member, Schedule I hereof shall be amended to reflect the name and address the additional Member. Prior to the admission of any Person as a Member, such Person shall execute a counterpart to this Agreement and shall agree to be bound by the terms hereof.

8.7 Dissolution.

(a) The Company shall be dissolved and its affairs wound up and terminated

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upon the first to occur of the following:

- (i) the determination of the Members to dissolve the Company; or
- (ii) any other event causing a dissolution of the Company under of the South Carolina LLC Act.

(b) Upon dissolution of the Company, the Company's affairs shall be promptly wound up in accordance with the provisions of this Section 8.7. The Company shall engage in no further business except as may be necessary, in the reasonable discretion of the Members, to preserve the value of the Company's assets during the period of dissolution and Liquidation.

(c) Distributions to the Members upon Liquidation may be made in cash or in kind, or partly in cash and partly in kind, as determined by the Members, so long as such distribution in kind is being made pro rata to all of the Members.

(d) The Net Profits and Net Losses of the Company during the Liquidation shall be allocated among the Members in accordance with the provisions of Section 5.

(e) The assets of the Company (including, without limitation, proceeds from the sale or other disposition of any assets during the period of dissolution and Liquidation) shall be applied as follows:

(i) first, to repay any indebtedness of the Company, whether to third parties or the Members, in the order of priority required by law;

(ii) second, to any reserves which the Members reasonably deem necessary for contingent or unforeseen liabilities or obligations of the Company (which reserves when they become unnecessary shall be distributed in accordance with the provisions of (iii), below); and

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(iii) third, ratably to the Members based upon the number of Units held.

(f) A Certificate of Cancellation shall be filed in accordance with the South Carolina LLC Act upon the dissolution and winding up of the Company.

8.8 Limitation on Liability. The debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company and no Member shall be obligated personally for any such debt, obligation or liability of the Company by reason of being a Member.

8.9 Definitions; Rules of Construction.

(a) When used in this Agreement, the following capitalized terms have the meanings ascribed to them below:

"Affiliate" means, with respect to any Person, (i) a director or executive officer of such Person or, if such Person is a trust, of such trust's primary beneficiary, (ii) a spouse, parent, sibling or descendant of such Person (or a trust formed for the benefit of a spouse, parent, sibling or descendant of such Person), and (iii) any other Person that, directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with such Person. The term "control" means and includes the possession, directly or indirectly, of the power to direct the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Capital Contribution" means, with respect to any Member, the amount of capital contributed by such Member to the Company in accordance with this Agreement.

"Code" means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

"Company" means Diamond Transportation SC LLC.

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"Distributions" means all Distributions made by the Company to holders of the Units, whether in cash, property, or other Units and whether by dividends, or Distributions upon a Liquidation or otherwise; provided, however, that a recapitalization, subdivision (including dividend and splits), combination (including reverse splits) or exchange of Units effected in accordance with this Agreement shall not be considered a Distribution.

"Fiscal Year" means the 12-month period beginning on January 1 and ending on December 31 of each year; provided, however, that for the year of formation of the Company the Fiscal Year shall mean the period commencing on the date of formation and ending on December 31 of such year.

"Interest" means the ownership interest of a Member in the Company, consisting of (a) such Member's ownership of Units and right to receive a portion of Distributions, (b) such Member's right to vote or grant or withhold consents with respect to Company matters as provided herein or in the South Carolina LLC Act and (c) such Member's other rights and privileges as herein provided.

"Liquidation" means any voluntary or involuntary Liquidation, dissolution or winding-up of the Company.

"Majority in Interest of Members" means, at any time, the Members who hold in the aggregate greater than 50% of the Units.

"Member" means any Person holding a Unit and any Person who shall be admitted as additional or substituted Member pursuant to this Agreement, so long as such Person shall remain a Member.

"Net Profits and Net Losses" means the net taxable income or net taxable loss of the Company, respectively, as determined for federal income tax purposes, for each Fiscal Year of

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the Company, including, without limitation, each item of Company income, gain, loss, or deduction, taking into account the following adjustments, and any other adjustments necessary in order to comply with Treasury Regulation Section 1.704-1(b)(2)(iv): (a) any income that is exempt from federal income tax and not otherwise taken into account shall be added to such taxable income or loss and (b) any expenditures that are not deductible in computing federal taxable income and not properly chargeable to capital accounts and not otherwise taken into account, shall be subtracted from such taxable income or loss.

"Person" shall be construed broadly and shall include an individual, a partnership, a corporation, an association, a joint stock company, a limited liability company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

"South Carolina LLC Act" means the South Carolina Uniform Limited Liability Company Act of 1996, codified at South Carolina Code of Laws, §33-44-101 *et. seq.*.

"Transfer" shall mean, as to any Units, to sell, or in any other way transfer, assign, pledge, distribute, encumber or otherwise dispose of (including, without limitation, the foreclosure or other acquisition by any lender with respect to any Units pledged to such lender by a Member, or by operation of law), such Units, either voluntarily or involuntarily and with or without consideration.

"Treasury Regulations" means regulations promulgated pursuant to the Code.

"Units" means, collectively or individually, the interests in the Company issued to a Member in accordance with the term hereof.

(b) The title of and the section and paragraph headings in this Agreement are for convenience of reference only and shall not govern the interpretation of any of the terms or

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provisions of this Agreement.

(c) The use herein of the masculine, feminine or neuter forms shall also denote the other forms, as in each case the context may require.

(d) Except when the context requires otherwise, any reference in this Agreement to any Section, Clause, Schedule or Exhibit shall be to the Sections and Clauses of, and Schedules and Exhibits to, this Agreement.

8.10 Amendments. Except as provided herein, this Agreement may be amended only upon the written consent of the Members.

8.11 Entire Agreement. Except as otherwise expressly set forth herein, this document embodies the complete agreement and understanding among the parties hereto with respect to the subject matter hereof and supersedes and preempts any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way.

8.12 Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of South Carolina without giving effect to any choice of law or conflict of law provision or rule (whether of the State of South Carolina or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of South Carolina.

8.13 No Third Party Beneficiaries. None of the provisions in this Agreement shall be for the benefit of or enforceable by any person other than the parties to this Agreement and their respective successors and assigns.

8.14 Further Assurances. Each Member shall execute all such certificates and other documents and shall do all such other acts as the deem appropriate to comply with the

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requirements of law for the formation of the Company and to comply with any laws, rules, regulations and third-party requests relating to the acquisition, operation or holding of the property of the Company.

8.15 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same Agreement.

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SCHEDULE I

<u>Name & Address</u>	<u>Contributions</u>	<u>Interest</u>
David M. Boucher 137 Jaffrey Road Malvern PA 19355	\$60.00	60%
Feeks Investments LLC John H. McFadden, Managing Member 104 N. Woodstock Street Philadelphia, PA 19103	\$35.00	35%
P. Joseph Scott 919 Chesterfield Drive Ambler, PA 19006	\$5.00	5%

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SCHEDULE II

Diamond Transportation SC LLC Managing Positions

<u>Name</u>	<u>Title</u>
Thomas Enright	General Manager
Dionne Pierce	Assistant General Manager
Catherine Ketchledge	Controller

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IN WITNESS WHEREOF, the undersigned have duly executed this Operating Agreement as of the date first written above.



David M. Boucher


John H. McPadden, as Managing Member of Feeks
Investments LLC
P. Joseph Scott

LAMB | McERLANE^{PC}

ATTORNEYS AT LAW

Vincent T. Donohue, Esquire
Voice (610) 430-8000
Fax (610) 692-0877
vdonohue@lambmcerlane.com

February 18, 2014

VIA FACSIMILE & FEDERAL EXPRESS
803-896-5199

Public Service Commission
Clerk's Office
Post Office Drawer 11649
Columbia, SC 29211

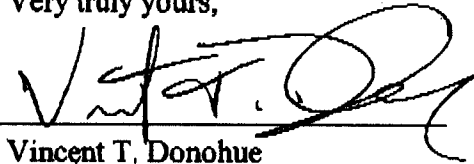
Re: Diamond Transportation SC, LLC
Class C Charter Bus Application

Dear Sir or Madam:

Attached please find the application of Diamond Transportation SC LLC for a Class C Charter Bus Certificate. We have attached the applicant's Certificate of Existence, filed with the South Carolina Department of State on January 13, 2014 along with the applicant's fully executed Operating Agreement.

We respectfully request that your office consider this application on an *expedited basis*. If you have any questions, please do not hesitate to contact me at any of the numbers above or by email. Thank you for your consideration.

Very truly yours,



Vincent T. Donohue
Lamb McErlane PC

cc: David M. Boucher, Managing Member, Diamond Transportation SC LLC